

Law Office of Kevin L. Hernandez
8872 S. Eastern Avenue, Suite 270
Las Vegas, Nevada 89123
(702) 563-4450 FAX: (702) 552-0408

Kevin L. Hernandez, Esq.
Nevada Bar No. 12594
**LAW OFFICE OF KEVIN L.
HERNANDEZ**
8872 S. Eastern Avenue, Suite 270
Las Vegas, Nevada 89123
T: (702) 563-4450
F: (702) 552-0408
kevin@kevinhernandezlaw.com
Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JAMES ROOT, an individual;

Plaintiff;

v.

AMERICAN EXPRESS NATIONAL BANK; a
national banking association; EXPERIAN
INFORMATION SOLUTIONS, INC., a foreign
corporation; TRANS UNION LLC, a foreign
limited-liability company;

Defendants.

Case No.: 2:20-cv-02267

COMPLAINT

JURY DEMAND

Plaintiff, James Root (“Plaintiff”), by and through the undersigned counsel of record, and for his claims for relief against Defendants, American Express National Bank (“Amex”), Experian Information Solutions, Inc. (“Experian”), and Trans Union LLC (“Trans Union”) complains and alleges as follows:

JURISDICTION AND VENUE

1. This action arises out of Defendants’ violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* (“FCRA”) and Amex’s breach of contract and breach of the implied covenant of good faith and fair dealing.

2. This court has jurisdiction over this matter under 15 U.S.C. § 1681(p) and 28 U.S.C. § 1331.

3. This Court has supplemental jurisdiction over the Breach of Contract and Breach

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1 of the Implied Covenant of Good Faith and Fair Dealing claims against Amex under 28 U.S.C. §
2 1367 because the FCRA and contract claims are so related in the action that they form part of the
3 same case or controversy under Article III of the United States Constitution. Specifically, each
4 claim involves the same transaction, contract, and series of events related to Amex's breach of
5 contract.

6 4. Under 28 U.S.C. § 1391(b), venue in this District is proper because, at all relevant
7 times, Plaintiff and Defendants resided and/or conducted business in the District of Nevada.

8 5. Venue is also proper in this District because the acts and transactions that give rise
9 to this action occurred, in substantial part, in the District of Nevada.

10 **PARTIES**

11 6. Plaintiff resides in the State of Nevada.

12 7. As an individual, Plaintiff is a "consumer" under 15 U.S.C. § 1681a(c).

13 8. Amex is a national banking association doing business in the State of Nevada.

14 9. Amex regularly and in the ordinary course of business furnishes credit information
15 about consumers, such as Plaintiff, to the national consumer reporting agencies, and is therefore a
16 "furnisher" under 15 U.S.C. § 1681s-2(b).

17 10. Experian is a foreign corporation doing business in the State of Nevada.

18 11. Experian is a "consumer reporting agency" under 15 U.S.C. § 1681a(f).

19 12. Experian is regularly engaged in the business of assembling, evaluating, and
20 disbursing information concerning consumers for the purpose of furnishing consumer reports as
21 defined in 15 U.S.C. § 1681a(d).

22 13. Experian disburses said consumer reports to third parties under contract for
23 monetary compensation.

24 14. Trans Union is a foreign limited-liability company doing business in the State of
25 Nevada.

26 15. Trans Union is a "consumer reporting agency" under 15 U.S.C. § 1681a(f).

17. Trans Union disburses said consumer reports to third parties under contract for monetary compensation.

18. Plaintiff reincorporates by reference all preceding paragraphs as if fully set forth below.

20. Under the Financial Relief Agreement, Amex and Plaintiff agreed to a reduced monthly payment for the Account.

21. Under the Financial Relief Agreement, Amex and Plaintiff agreed to report the Account as “current” so long as Plaintiff continued to make payments under the program.

22. Under the Financial Relief Agreement, Amex agreed to preserve the limits on Plaintiff's Amex credit cards while Plaintiff remained current in the program.

23. Plaintiff has made all payments on time under the agreement with Amex under the Financial Relief Agreement.

24. On or about July 2020, Plaintiff obtained copies of his Experian and Trans Union credit reports and became aware that Defendants were reporting the following inaccurate information concerning the Account:

- 30 days late
- Past Due Balance - \$3,063

25. The inaccurate reporting arose out of a processing error made by Amex.

26. Under the Financial Relief Agreement, Amex agreed not to charge late fees.

27. Amex charged late fees to the Account despite the Account being current under the Financial Relief Agreement.

1 28. Amex made the credit line unavailable for use despite Plaintiff being current under
2 the Financial Relief Agreement.

3 29. Plaintiff promptly made Amex aware of the errors, including in writing and in at
4 least 17 phone calls, and Amex assured Plaintiff it would correct the errors.

5 30. In July 2020, Plaintiff submitted written disputes to Experian and Trans Union
6 regarding the inaccurate Account.

7 31. On information and belief, Experian and Trans Union submitted Plaintiff's written
8 disputes to Amex for investigation.

9 32. Despite receiving both written and verbal notice, Amex continued to report the
10 inaccurate delinquencies for the Account for up to 120 days.

11 33. In a letter to Plaintiff, dated October 14, 2020, Amex admitted to Plaintiff that it
12 failed to process Plaintiff's entrance into its Financial Relief Program, which caused the inaccurate
13 derogatory information on his credit profiles ("Amex Letter").

14 34. In the Amex Letter, Amex stated that it "incorrectly processed the payment program
15 enrollment."

16 35. Defendants failed to fully correct the inaccuracies in Plaintiff's credit report within
17 thirty (30) days of receipt of Plaintiff's written disputes.

18 36. Upon receipt of Plaintiff's disputes of the inaccurate information, Defendants failed
19 to evaluate or consider any of Plaintiff's information, claims, or evidence and did not make any
20 attempt to substantially or reasonably verify the disputed account information on Plaintiff's credit
21 reports.

22 37. Defendants failed to conduct a lawful investigation of the disputed account
23 information on Plaintiff's credit reports.

24 38. In failing to delete the inaccurate information, Defendants continued to report
25 inaccurate information in violation of the FCRA.

26 39. In failing to delete the inaccurate information, Defendants provided misleading
27 information on Plaintiff's credit reports in violation of the FCRA.
28

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1 40. Defendants' inaccurate reporting and Amex's breaches of the Financial Relief
2 Agreement continue to affect Plaintiff's creditworthiness and credit score negatively.

3 41. Defendants' inaccurate reporting and Amex's breaches of the Financial Relief
4 Agreement caused Plaintiff to receive a loan denial from the U.S. Small Business Administration
5 ("SBA") for an Economic Injury Disaster Loan.

6 42. The SBA sent a denial to Plaintiff indicating that the reason for the loan denial was
7 "unsatisfactory credit history."

8 43. Plaintiff would have qualified for the SBA loan had the Defendants reported the
9 Account accurately and had Amex not breached the Financial Relief Agreement.

10 44. Defendants' inaccurate reporting and Amex's breaches of the Financial Relief
11 Agreement caused Citibank to close Plaintiff's accounts.

12 45. Defendants' inaccurate reporting and Amex's breaches of the Financial Relief
13 Agreement caused Chase to close Plaintiff's accounts.

14 46. Defendants' inaccurate reporting and Amex's breaches of the Financial Relief
15 Agreement caused Plaintiff's business to be unable to rent a location.

16 **FIRST CLAIM FOR RELIEF**

17 **[Violations of 15 U.S.C. § 1681e(b) against Experian and Trans Union]**

18 47. Plaintiff reincorporates by reference all preceding paragraphs as if fully set forth
19 below.

20 48. Experian and Trans Union violated 15 U.S.C. § 1681e(b) by failing to establish or
21 to follow reasonable procedures to assure maximum possible accuracy in the preparation of the
22 credit reports and credit files each publishes and maintains concerning Plaintiff.

23 49. As a direct and proximate result of this conduct alleged in this Complaint, Plaintiff
24 suffered, and continues to suffer, damage by loss of credit and loss of ability to purchase and
25 benefit from credit.

26 50. Experian and Trans Union's acts and omissions were willful, rendering each liable
27 for punitive damages in an amount to be determined at trial on the merits under 15 U.S.C. § 1681n.
28

55. Plaintiff reserves the right to assert additional facts and damages not referenced in this Complaint, and/or to present evidence of the same at the time of trial.

[Violation of 15 U.S.C. § 1681i against Experian and Trans Union]

59. Experian and Trans Union's conduct was willful, rendering each liable for actual or statutory damages, and punitive damages in an amount to be determined by the court under 15 U.S.C. § 1681n.

60. In the alternative, Experian and Trans Union were negligent in the above-referenced acts and omissions, entitling Plaintiff to recovery under 15 U.S.C. § 1681o.

61. Plaintiff is entitled to recover costs and attorneys' fees from Experian and Trans Union in an amount to be determined by the Court under 15 U.S.C. § 1681n or § 1681o.

THIRD CLAIM FOR RELIEF

[Violations of the FCRA, 15 U.S.C. § 1681s-2(b) against Amex]

62. Plaintiff reincorporates by reference all preceding paragraphs as if fully set forth below.

63. Amex violated the FCRA, 15 U.S.C. § 1681s-2(b), by continuing to report the false representations within Plaintiff's credit file with Experian and Trans Union; by failing to investigate Plaintiff's dispute properly; by failing to review all relevant information regarding Plaintiff's dispute; by failing to respond to Experian and Trans Union accurately; by failing to report results on Plaintiff's credit files correctly; and by failing to permanently and lawfully correct its own internal records to prevent the aforementioned violations.

64. As a direct and proximate result of this conduct alleged in this Complaint, Plaintiff suffered, and continues to suffer, damage by loss of credit, and loss of ability to purchase and benefit from credit.

65. Amex's acts and omissions were willful, rendering it liable for punitive damages in an amount to be determined at trial on the merits under 15 U.S.C. § 1681n.

66. In the alternative, Amex was negligent in the above-referenced acts and omissions, entitling Plaintiff to recover under 15 U.S.C. § 1681o.

67. As a direct and proximate result of the above-referenced violations by Amex, Plaintiff is entitled to statutory damages plus actual damages to be proven at the time of trial in this matter.

68. Plaintiff is entitled to recover costs and attorney's fees from Amex in an amount to be determined by the court under 15 U.S.C. § 1681n or § 1681o.

69. Plaintiff may have suffered damages in other ways and to other extents not presently known to Plaintiff, and not specified in this Complaint.

FIFTH CLAIM FOR RELIEF

[Breach of the Implied Covenant of Good Faith and Fair Dealing against Amex]

81. Plaintiff reincorporates by reference all preceding paragraphs as if fully set forth below.

82. Plaintiff entered into a valid and enforceable contract with Amex, referenced above as the Financial Relief Agreement.

83. Every contract in Nevada includes an implied covenant of good faith and fair dealing, under which each party must act in a manner that is faithful to the purpose of the contract and the justified expectations of the other party.

84. Under the Financial Relief Agreement, Amex and Plaintiff agreed to a reduced monthly payment for the Account.

85. Under the Financial Relief Agreement, Amex and Plaintiff agreed to report the Account as “current” so long as Plaintiff continued to make payments under the program.

86. Under the Financial Relief Program, Amex agreed to preserve the limits on Plaintiff’s Amex credit cards while Plaintiff remained current in the program.

87. Plaintiff performed all terms, covenants, and conditions of the Financial Relief Agreement.

88. Amex breached the implied covenant of good faith and fair dealing by inducing Plaintiff to enter into the Financial Relief Agreement while failing to take all necessary steps to complete the parties’ agreement.

89. Amex breached the implied covenant of good faith and fair dealing by failing and/or refusing to take all actions reasonable and necessary to reduce the monthly payment on the Account to the agreed-upon terms.

90. Amex breached the implied covenant of good faith and fair dealing by failing and/or refusing to take all actions reasonable and necessary to report the Account as current each month.

91. Amex breached the implied covenant of good faith and fair dealing by failing and/or refusing to take all actions reasonable and necessary to preserve the limits on Plaintiff’s Amex credit cards while Plaintiff remained current in the program.

1 92. Through these actions, Amex failed to act in a manner that is faithful to the purpose
2 of the contract and the justified expectations of Plaintiff.

3 93. As a result of Amex's breach of the implied covenant of good faith and fair dealing,
4 Plaintiff has suffered damages, including without limitation, credit denials, loss of financial
5 standing, embarrassment, and emotional distress.

6 94. As a result of Amex's breach of the implied covenant of good faith and fair dealing,
7 Plaintiff has been forced to retain the services of legal counsel for which Plaintiff is entitled to
8 recover such costs and expenses from Amex

9 **WHEREFORE**, Plaintiff prays for relief as follows:

- 10 1. For an award of actual damages;
11 2. For an award of statutory damages;
12 3. For punitive damages;
13 4. For an award reimbursing Plaintiff for reasonable attorney's fees, costs, and interest
14 incurred; and
15 5. For such other further relief as the court deems proper.

16 **TRIAL BY JURY DEMANDED ON ALL COUNTS.**

17 Dated: December 15, 2020

18 **LAW OFFICE OF KEVIN L.
HERNANDEZ**

19 /s/ Kevin L. Hernandez
20 Kevin L. Hernandez, Esq.
21 Nevada Bar No. 12594
22 8872 S. Eastern Avenue, Suite 270
23 Las Vegas, Nevada 89123
24 kevin@kevinhernandezlaw.com
25 Attorney for Plaintiff

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